

Azeke v. Mukasey, 06-72987

DEC 17 2007

KLEINFELD, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent. I agree that we lack jurisdiction to consider Azeke's untimely petition for review in 06-72987, and that we lack jurisdiction to consider the disputed facts in 06-73795 under *Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007). I dissent only with respect to the adverse credibility remand.

We may reverse a credibility determination only if the "evidence compels a contrary conclusion."¹ Not all of the BIA's articulated reasons need be supported, under circuit law. We affirm an adverse credibility determination "so long as one of the identified grounds is supported by substantial evidence" and is a specific, cogent reason that goes to the heart of the asylum claim.²

The adverse credibility determination did not depend solely on the issue of whether Azeke had written a "comprehensive report," a two page letter, or the status of the relevant official. The IJ found that Azeke did not explain enough about any of the threatening phone calls he claimed to have received to make the

¹Kaur v. Gonzales, 418 F.3d 1061, 1064 (9th Cir. 2005).

²Li v. Ashcroft, 378 F.3d 959, 962, 964 (9th Cir. 2004).

claim credible, such as the number of phone calls, the times of day of the phone calls, who made the telephone calls, the specific threats made, or the dates of the phone calls. Azeke also did not give many details about his home that he claimed was burned down. The IJ concluded that while testifying, Azeke “appeared nervous and confused, he did not look the court in the eye, or any of the questioners, he was evasive to questions, often babbling and rambling his answers often without ever actually responding. His responses were often non-sensical” There is substantial evidence in the record for the IJ’s skepticism. This record could be read either way, credible or not credible, so I cannot say that it “compels” a contrary conclusion.³

I would deny the petition for review in its entirety.

³Kaur v. Gonzales, 418 F.3d 1061, 1064 (9th Cir. 2005).